
OLR Bill Analysis

sHB 6526

AN ACT CONCERNING CHILDREN'S PRODUCTS AND CHEMICALS OF HIGH CONCERN.

SUMMARY:

This bill requires the commissioner of the Department of Public Health (DPH), in consultation with the commissioners of Energy and Environmental Protection (DEEP) and Consumer Protection (DCP), to create and maintain a list of “priority” chemicals that are of high concern to children after considering a child’s or developing fetus’ potential for exposure to each chemical. The first two chemicals must be identified for inclusion on the list by January 1, 2014, and at least another two must be identified every two years thereafter. The list can include chemicals on Maine’s and Washington’s lists of similar chemicals.

The commissioner must review and revise the list at least biennially and consider adding to it. The bill also requires the DPH commissioner to report to the Public Health Committee on the list’s status biennially, with the first report due by January 15, 2015.

The bill requires children’s products manufacturers, or a trade organization on behalf of its member manufacturers, to provide a Disclosure Notification Report to DPH when any of its products contains an intentionally added priority chemical. And it requires these manufacturers to submit a plan for removing the chemicals. The DPH commissioner can assess a fee on the manufacturers or their trade organizations to pay for processing and managing the report and plan information.

The bill also permits the DPH commissioner to participate in an interstate chemicals clearinghouse.

Finally, it repeals a requirement that the DCP commissioner, within

available appropriations and in consultation with the DPH and DEEP commissioners, compile lists of (1) toxic substances that potentially should not exist in children's products, and (2) safer alternatives to them, other than a list that, by law, he must already do for toys and other articles intended for children's use and are classified as banned hazardous substances.

EFFECTIVE DATE: Upon passage

PRIORITY LIST OF CHEMICALS

Priority Chemical Defined

The bill defines a priority chemical as one the DPH commissioner identifies and is known, based on credible scientific evidence to:

1. harm the normal development of a fetus or child or cause other developmental toxicity;
2. cause cancer, genetic damage, or reproductive harm;
3. disrupt the endocrine system;
4. damage the nervous or immune systems or organs system or cause other systemic toxicity;
5. be persistent, bioaccumulative, and toxic; or
6. be very persistent and very bioaccumulative.

A "very persistent" chemical has long-range transport capabilities or a half-life (1) in soil or sediment of more than 180 days or (2) in water of 60 or more days. A "very bioaccumulative" chemical is one having a bioconcentration factor or bioaccumulation factor of 5,000 or more or having a "log K_{ow} " over 5.0. K_{ow} is a measurement that provides useful prediction of the other physical properties for most organic substances with molecular weight below 500. Both bioaccumulation and log K_{ow} are considered to be good indicators of bioaccumulation of chemicals in organisms and food chains. The higher the K_{ow} value, the more likely the chemical is to have a bioaccumulative effect.

Other States' Lists

The bill allows the DCP, DEEP, and DPH commissioners to include on the priority list chemicals that (1) are on the Maine Department of Environmental Protection's Chemicals of High Concern list and the Washington Department of Health's Chemicals of High Concern for Children list (see BACKGROUND) or (2) meet one of more of the following criteria:

1. biomonitoring studies demonstrate the chemical's presence in umbilical cord blood, breast milk, urine, or other bodily tissues or fluid;
2. sampling and analysis has found the chemical to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or
3. the chemical has been added to or is in a consumer product used or present in the home.

DISCLOSURES BY MANUFACTURERS

The bill requires children's product manufacturers or trade groups representing these manufacturers, within one year after a priority chemical is added to the list, to provide a Disclosure Notification Report to the DPH commissioner in a form and manner that she prescribes when the manufacturer makes a product containing an intentionally added priority chemical. An intentionally added chemical is one added during the manufacture of a product, or one of the product's components, to provide a specific characteristic, appearance, or quality, or to perform a specific function.

The report must be filed every two years (presumably this is after the initial report is filed) and must include:

1. the priority chemical's name and its Chemical Abstracts Service registry number;
2. a brief description of the product or product component containing the priority chemical;

3. a description of the priority chemical's function in the product;
4. the amount of the priority chemical in the product;
5. the manufacturer's name, address, and contact information; and
6. any other information the commissioner requires.

The bill permits the DPH commissioner to authorize a manufacturer to submit the report to "the" Interstate Chemicals Clearinghouse (ICC) (see below).

The bill defines a "manufacturer" as any person who manufactured a final consumer product or whose brand name is affixed to the consumer product. For products imported into the U.S., this includes the product's importer or first domestic distributor if the person who manufactured or assembled the product or whose name brand is affixed to it does not have a U.S. presence.

Children's Product Defined

The bill defines a children's product as a consumer product designed or intended primarily for children under age 12, including clothing, baby products, toys, car seats, personal care products, and any consumer product containing a chemical of high concern that, when used or disposed of, will likely result in a child age 12 or younger, or a fetus, being exposed to it.

Such products do not include over-the-counter and prescription drugs, food, dietary supplements, packaging, medical devices, and products that are both a cosmetic and a drug regulated by the federal Food and Drug Administration. The bill provides that a product label with usage instructions for a product that applies to children does not by itself make that product a children's product.

The state Child Protection Act (CGS § 21a-335, et seq.), which generally bans the manufacture or sale of certain children's products that are considered hazardous, defines a children's product as a consumer product designed or intended for children of the same ages

as under the bill, and also includes accessories, jewelry, decorative objects, candy, food, dietary supplements or other edible or chewable items, furniture, or other articles children use.

MANUFACTURER PLANS TO REMOVE CHEMICALS FROM THEIR PRODUCTS

The bill requires manufacturers, within two years after a chemical is placed on the priority list, to submit a Product Innovation Plan to the DPH commissioner if they manufacture a children's product containing the chemical.

The plan must include:

1. a timeframe for removing the priority chemical from the product;
2. an affidavit stating that any chemical used to replace the priority chemical is inherently less hazardous to children's health based on (a) supporting documentation that the new chemical is not (i) persistent, bioaccumulative, and toxic; (ii) very persistent, bioaccumulative, and toxic; (iii) very persistent and toxic; (iv) very bioaccumulative and toxic; or (v) known or likely to be carcinogenic, mutagenic, a reproductive or developmental toxicant, neurotoxicant, or endocrine-disrupting; or (b) a hazard assessment protocol; or
3. a plan and timeline acceptable to the commissioner for conducting research to identify inherently less hazardous substitutes if none currently exist for specific identified uses.

The bill allows the DPH commissioner to authorize the ICC to review and determine the plan's adequacy.

The commissioner must approve the plan if it meets the bill's criteria and contains a three-year chemical phase-out timeframe. If the plan fails to meet "such" criteria (it is not clear whether such includes both the criteria and the timeframe or just the criteria), the commissioner must make recommendations to the General Assembly

regarding (1) product labeling, (2) the manufacturer forfeiting its ability to sell its children's products in the state (which apparently would include all products, not just those with priority chemicals), and (3) civil penalties that DPH can collect (presumably against a manufacturer that fails to comply with the bill's provisions).

The bill permits manufacturers that sell children's products in Connecticut that contain priority chemicals to consult with the Chemical Innovations Institute at the UConn Health Center (see BACKGROUND) or other "green" chemistry research institution in the state to identify a replacement chemical that is inherently less hazardous to children's health. The identified replacement chemical must include the supporting documentation the bill requires.

REPORTS

The bill requires the DPH commissioner to report to the Public Health Committee on the status of the priority list of chemicals by January 15, 2015 and every two years thereafter. She must include the number of (1) manufacturers that have submitted disclosure notification reports in the previous biennium; (2) manufacturers in compliance with the product innovation plans; and (3) products, users, and manufacturers, if any, that the commissioner has exempted. (The bill does not authorize, or establish a process for, DPH to grant exemptions.)

FEES

The bill allows the DPH commissioner to assess a fee the manufacturers or trade associations pay to cover the agency's reasonable costs in processing and managing the information collected from disclosure notification reports and product innovation plans. No fee may be assessed on a manufacturer that (1) submits a product innovation plan no more than two years after it is required to do so and (2) certifies in the plan that the priority chemical is removed and no other chemical has been substituted for it.

INTERSTATE CHEMICALS CLEARINGHOUSE PARTICIPATION

The bill authorizes the DPH commissioner, within available

appropriations, to participate in an interstate chemicals clearinghouse to:

1. classify chemicals in children's products into one of the following categories: (a) high concern, (b) moderate concern, (c) low concern, and (d) unknown concern;
2. organize and manage available data on chemicals including information on uses, hazards, and environmental concerns;
3. produce and inventory information on safer alternatives for specific uses of chemicals and model policies and programs related to the alternatives;
4. provide technical assistance to businesses and consumers relating to safer chemicals; and
5. perform other related activities.

The law (CGS § 22a-902) already authorizes the DEEP commissioner, within available appropriations, to participate in an interstate clearinghouse for the same purposes as those the bill delineates for the DPH commissioner. (DEEP already participates in the Interstate Chemicals Clearinghouse, which includes several other states, see BACKGROUND.)

BACKGROUND

Maine and Washington Lists of Chemicals

Maine has compiled a "List of Chemicals of High Concern." The list includes toxicity and exposure levels based on scientific studies. The list includes 49 chemicals, eight of which were found to be of concern when ingested by children.

Washington has identified 66 chemicals of high concern to children and publishes a list of these. For each chemical, the state includes information on toxicity and exposure and cites references.

Chemical Innovations Institute

In 2010, the legislature established a Chemical Innovations Institute

at the UConn Health Center to (1) foster green job growth and safer workplaces through encouraging clean technology innovation and utilization of green chemistry, and (2) provide assistance to businesses, state agencies, and nonprofits that wish to use alternatives to chemicals that are harmful to the public health and environment (PA 10-164, codified in § 22a-903).

Interstate Chemicals Clearinghouse

The Interstate Chemicals Clearinghouse (also known as IC2) is an association of state, local, and tribal governments that promotes a clean environment, healthy communities, and a vital economy through the development and use of safer chemicals and products.

COMMITTEE ACTION

Children Committee

Joint Favorable Substitute

Yea 8 Nay 4 (03/12/2013)